

103D CONGRESS  
1ST SESSION

# H. R. 1272

To amend title I of the Employee Retirement Income Security Act of 1974 to set standards under such title for multiple employer welfare arrangements providing health plan benefits.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 10, 1993

Mr. PETRI (for himself, Mr. MARTINEZ, Mr. GOODLING, Mr. GUNDERSON, Mr. FAWELL, Mr. BALLENGER, Ms. MOLINARI, Mr. BARRETT of Nebraska, Mr. BOEHNER, Mr. GRANDY, Mr. SENSENBRENNER, Mr. OXLEY, Mrs. MORELLA, Mr. LEWIS of Florida, and Mr. BARTON of Texas) introduced the following bill; which was referred to the Committee on Education and Labor

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## A BILL

To amend title I of the Employee Retirement Income Security Act of 1974 to set standards under such title for multiple employer welfare arrangements providing health plan benefits.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

### 3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Multiple Employer  
5 Health Benefits Protection Act of 1993”.

1 **SEC. 2. LIMITED EXEMPTION UNDER PREEMPTION RULES**  
2 **FOR MULTIPLE EMPLOYER PLANS PROVID-**  
3 **ING HEALTH BENEFITS SUBJECT TO CERTAIN**  
4 **FEDERAL STANDARDS.**

5 (a) IN GENERAL.—Subtitle B of title I of the Em-  
6 ployee Retirement Income Security Act of 1974 is amend-  
7 ed by adding at the end the following new part:

8 “Part 7—Multiple Employer Health Plans

9 **“SEC. 701. DEFINITIONS.**

10 “For purposes of this part—

11 “(1) INSURER.—The term ‘insurer’ means an  
12 insurance company, insurance service, or insurance  
13 organization, licensed to engage in the business of  
14 insurance by a State.

15 “(2) PARTICIPATING EMPLOYER.—The term  
16 ‘participating employer’ means, in connection with a  
17 multiple employer welfare arrangement, any em-  
18 ployer if any of its employees, or any of the depend-  
19 ents of its employees, are or were covered under  
20 such arrangement during the employment of the  
21 employees.

22 “(3) EXCESS/STOP LOSS COVERAGE.—The term  
23 ‘excess/stop loss coverage’ means, in connection with  
24 a multiple employer welfare arrangement, a contract  
25 under which an insurer provides for payment with  
26 respect to claims under the arrangement, relating to

1 participants or beneficiaries individually or other-  
2 wise, in excess of an amount or amounts specified in  
3 such contract.

4 “(4) QUALIFIED ACTUARY.—The term ‘quali-  
5 fied actuary’ means an individual who is a member  
6 of the American Academy of Actuaries or meets  
7 such reasonable standards and qualifications as the  
8 Secretary may provide by regulation.

9 “(5) SPONSOR.—The term ‘sponsor’ means, in  
10 connection with a multiple employer welfare arrange-  
11 ment, the association or other entity which estab-  
12 lishes or maintains the arrangement.

13 “(6) STATE LOCATION OF COVERED INDIVID-  
14 UALS.—

15 “(A) IN GENERAL.—A multiple employer  
16 welfare arrangement shall be treated as cover-  
17 ing individuals located in a State only if the  
18 minimum required number of individuals who  
19 are covered under the arrangement are located  
20 in such State, except that if the minimum re-  
21 quired number of individuals are not located in  
22 any State, such arrangement shall be treated as  
23 covering individuals in any State in which any  
24 covered individual is located.

1           “(B) MINIMUM REQUIRED NUMBER.—For  
2           purposes of subparagraph (A), the minimum re-  
3           quired number is the greater of—

4                   “(i) 5 percent of the total number of  
5                   individuals described in subparagraph (A),  
6                   or

7                   “(ii) 50.

8           “(C) LOCATION OF INDIVIDUALS IN  
9           STATE.—For purposes of subparagraph (A), an  
10          individual shall be treated as located in a State  
11          if such individual is employed in such State or  
12          the address of such individual last known by  
13          the arrangement is located in such State.

14          “(7) STATE INSURANCE COMMISSIONER.—The  
15          term ‘State insurance commissioner’ means the in-  
16          surance commissioner (or similar official) of a State.

17          “(8) DOMICILE STATE.—The term ‘domicile  
18          State’ means, in connection with a multiple employer  
19          welfare arrangement, the State in which, according  
20          to the application for an exemption under this part,  
21          most individuals to be covered under the arrange-  
22          ment are located, except that, in any case in which  
23          information contained in the latest annual report of  
24          the arrangement filed under this part indicates that  
25          most individuals covered under the arrangement are

1 located in a different State, such term means such  
2 different State.

3 “(9) FULLY INSURED ARRANGEMENT.—A mul-  
4 tiple employer welfare arrangement shall be treated  
5 as fully insured only if one or more insurers, health  
6 maintenance organizations, similar organizations  
7 regulated under State law for solvency, or any com-  
8 bination thereof are liable under one or more insur-  
9 ance policies or contracts for all benefits under the  
10 arrangement (irrespective of any recourse they may  
11 have against other parties).

12 “(10) MULTIPLE EMPLOYER HEALTH PLAN.—  
13 The term ‘multiple employer health plan’ means a  
14 multiple employer welfare arrangement treated as an  
15 employee welfare benefit plan by reason of an  
16 exemption under this part.

17 **“SEC. 702. EXEMPTED MULTIPLE EMPLOYER PLANS PRO-**  
18 **VIDING BENEFITS IN THE FORM OF MEDICAL**  
19 **CARE RELIEVED OF CERTAIN RESTRICTIONS**  
20 **ON PREEMPTION OF STATE LAW AND TREAT-**  
21 **ED AS EMPLOYEE WELFARE BENEFIT PLANS.**

22 “(a) IN GENERAL.—Subject to subsection (b), a mul-  
23 tiple employer welfare arrangement which is not fully in-  
24 sured and with respect to which there is in effect an ex-  
25 emption granted by the Secretary under this part (or with

1 respect to which there is pending a complete application  
2 for such an exemption and the Secretary determines that  
3 provisional protection under this part is appropriate)—

4 “(1) shall be treated for purposes of subtitle A  
5 and the preceding parts of this subtitle as an em-  
6 ployee welfare benefit plan, irrespective of whether  
7 such arrangement is an employee welfare benefit  
8 plan, and

9 “(2) shall be exempt from section  
10 514(b)(6)(A)(ii).

11 “(b) BENEFITS MUST CONSIST OF MEDICAL  
12 CARE.—Subsection (a) shall apply to a multiple employer  
13 welfare arrangement only if the benefits provided there-  
14 under consist solely of medical care described in section  
15 607(1) (disregarding such incidental benefits as the  
16 Secretary shall specify by regulation).

17 “(c) RESTRICTION ON COMMENCEMENT OF NEW AR-  
18 RANGEMENTS.—A multiple employer welfare arrangement  
19 providing benefits which consist of medical care described  
20 in section 607(1) which has not commenced operations as  
21 of January 1, 1994, may commence operations only if an  
22 exemption granted to the arrangement under this part is  
23 in effect (or there is pending with respect to the arrange-  
24 ment a complete application for such an exemption and

1 the Secretary determines that provisional protection under  
2 this part is appropriate).

3 **“SEC. 703. EXEMPTION PROCEDURE.**

4 “(a) IN GENERAL.—The Secretary shall grant an ex-  
5 emption described in section 702(a) to a multiple employer  
6 welfare arrangement if—

7 “(1) an application for such exemption with re-  
8 spect to such arrangement, identified individually or  
9 by class, has been duly filed in complete form with  
10 the Secretary in accordance with this part,

11 “(2) such application demonstrates compliance  
12 with the requirements of section 704 with respect to  
13 such arrangement, and

14 “(3) the Secretary finds that such exemption  
15 is—

16 “(A) administratively feasible,

17 “(B) not adverse to the interests of the in-  
18 dividuals covered under the arrangement, and

19 “(C) protective of the rights and benefits  
20 of the individuals covered under the arrange-  
21 ment.

22 “(b) NOTICE AND HEARING.—Before granting an ex-  
23 emption under this section, the Secretary shall publish no-  
24 tice in the Federal Register of the pendency of the exemp-  
25 tion, shall require that adequate notice be given to inter-

1 ested persons, including the State insurance commissioner  
2 of each State in which covered individuals under the ar-  
3 rangement are, or are expected to be, located, and shall  
4 afford interested persons opportunity to present views.  
5 The Secretary may not grant an exemption under this sec-  
6 tion unless the Secretary affords an opportunity for a  
7 hearing and makes a determination on the record with re-  
8 spect to the findings required under subsection (a)(3). The  
9 Secretary shall, to the maximum extent practicable, make  
10 a final determination with respect to any application filed  
11 under this section in the case of a newly established ar-  
12 rangement within 90 days after the date which the Sec-  
13 retary determines is the date on which such application  
14 is filed in complete form.

15 **“SEC. 704. ELIGIBILITY REQUIREMENTS.**

16 “(a) APPLICATION FOR EXEMPTION.—

17 “(1) IN GENERAL.—An exemption may be  
18 granted by the Secretary under this part only on the  
19 basis of an application filed with the Secretary in  
20 such form and manner as shall be prescribed in reg-  
21 ulations of the Secretary. Any such application shall  
22 be signed by the operating committee and the spon-  
23 sor of the arrangement.

24 “(2) FILING FEE.—The arrangement shall pay  
25 to the Secretary at the time of filing an application



1 under this section a filing fee in the amount of  
2 \$5,000, which shall be available, to the extent pro-  
3 vided in appropriation Acts, to the Secretary for the  
4 sole purpose of administering the exemption proce-  
5 dures under this part.

6 “(3) INFORMATION INCLUDED.—An application  
7 filed under this section shall include, in a manner  
8 and form prescribed in regulations of the Secretary,  
9 at least the following information:

10 “(A) IDENTIFYING INFORMATION.—The  
11 names and addresses of—

12 “(i) the sponsor, and

13 “(ii) the members of the operating  
14 committee of the arrangement.

15 “(B) STATES IN WHICH ARRANGEMENT IN-  
16 TENDS TO DO BUSINESS.—The States in which  
17 individuals covered under the arrangement are  
18 to be located and the number of such individ-  
19 uals expected to be located in each such State.

20 “(C) BONDING REQUIREMENTS.—Evidence  
21 provided by the operating committee that the  
22 bonding requirements of section 412 will be met  
23 as of the date of the application.

24 “(D) PLAN DOCUMENTS.—A copy of the  
25 documents governing the arrangement (includ-

1 ing any bylaws and trust agreements), the sum-  
2 mary plan description, and other material de-  
3 scribing the benefits and coverage that will be  
4 provided to individuals covered under the ar-  
5 rangement.

6 “(E) AGREEMENTS WITH SERVICE PROVID-  
7 ERS.—A copy of any agreements between the  
8 arrangement and contract administrators and  
9 other service providers.

10 “(F) FUNDING REPORT.—A report setting  
11 forth information determined as of a date with-  
12 in the 120-day period ending with the date of  
13 the application, including the following:

14 “(i) RESERVES.—A statement, cer-  
15 tified by the operating committee of the ar-  
16 rangement, and a statement of actuarial  
17 opinion, signed by a qualified actuary, that  
18 all applicable requirements of section 707  
19 are or will be met in accordance with regu-  
20 lations which the Secretary shall prescribe.

21 “(ii) ADEQUACY OF CONTRIBUTION  
22 RATES.—A statement of actuarial opinion,  
23 signed by a qualified actuary, which sets  
24 forth a description of the extent to which  
25 contribution rates are adequate to provide

1 for the payment of all obligations and the  
2 maintenance of required reserves under the  
3 arrangement for the 12-month period be-  
4 ginning with such date within such 120-  
5 day period, taking into account the ex-  
6 pected coverage and experience of the ar-  
7 rangement. If the contribution rates are  
8 not fully adequate, the statement of actu-  
9 arial opinion shall indicate the extent to  
10 which the rates are inadequate and the  
11 changes needed to ensure adequacy.

12 “(iii) CURRENT AND PROJECTED  
13 VALUE OF ASSETS AND LIABILITIES.—A  
14 statement of actuarial opinion signed by a  
15 qualified actuary, which sets forth the cur-  
16 rent value of the assets and liabilities accu-  
17 mulated under the arrangement and a pro-  
18 jection of the assets, liabilities, income,  
19 and expenses of the arrangement for the  
20 12-month period referred to in clause (ii).  
21 The income statement shall identify sepa-  
22 rately the arrangement’s administrative ex-  
23 penses and claims.

24 “(iv) COSTS OF COVERAGE TO BE  
25 CHARGED AND OTHER EXPENSES.—A

1 statement of the costs of coverage to be  
2 charged, including an itemization of  
3 amounts for administration, reserves, and  
4 other expenses associated with the oper-  
5 ation of the arrangement.

6 “(v) OTHER INFORMATION.—Any  
7 other information which may be prescribed  
8 in regulations of the Secretary as nec-  
9 essary to carry out the purposes of this  
10 part.

11 “(b) OTHER REQUIREMENTS.—A complete applica-  
12 tion for an exemption under this part shall include infor-  
13 mation which the Secretary determines to be complete and  
14 accurate and sufficient to demonstrate that the following  
15 requirements are met with respect to the arrangement:

16 “(1) SPONSOR.—The sponsor is, and has been  
17 (together with its immediate predecessor, if any) for  
18 a continuous period of not less than 3 years before  
19 the date of the application, organized and main-  
20 tained in good faith, with a constitution and bylaws  
21 specifically stating its purpose, as a trade associa-  
22 tion, an industry association, a professional associa-  
23 tion, or a chamber of commerce or other business  
24 group, for substantial purposes other than that of  
25 obtaining or providing medical care described in sec-

1       tion 607(1), and the applicant demonstrates to the  
2       satisfaction of the Secretary that the sponsor is es-  
3       tablished as a permanent entity which receives the  
4       active support of its members.

5       “(2) OPERATING COMMITTEE.—The arrange-  
6       ment is operated, pursuant to a trust agreement, by  
7       an operating committee which has complete fiscal  
8       control over the arrangement and which is respon-  
9       sible for all operations of the arrangement, and the  
10      operating committee has in effect rules of operation  
11      and financial controls, based on a 3-year plan of op-  
12      eration, adequate to carry out the terms of the ar-  
13      rangement and to meet all requirements of this title  
14      applicable to the arrangement. The members of the  
15      committee are individuals selected from individuals  
16      who are the owners, officers, directors, or employees  
17      of the participating employers or who are partners  
18      in the participating employers and actively partici-  
19      pate in the business. No such member is an owner,  
20      officer, director, or employee of, or partner in, a con-  
21      tract administrator or other service provider to the  
22      arrangement, except that officers or employees of a  
23      sponsor which is a service provider (other than a  
24      contract administrator) to the arrangement may be  
25      members of the committee if they constitute not

1 more than 25 percent of the membership of the com-  
2 mittee and they do not provide services to the ar-  
3 rangement other than on behalf of the sponsor. The  
4 committee has sole authority to approve applications  
5 for participation in the arrangement and to contract  
6 with a service provider to administer the day-to-day  
7 affairs of the arrangement.

8 “(3) CONTENTS OF GOVERNING INSTRU-  
9 MENTS.—The instruments governing the arrange-  
10 ment include a written instrument, meeting the re-  
11 quirements of an instrument required under section  
12 402(a)(1), which—

13 “(A) provides that the committee serves as  
14 the named fiduciary required for plans under  
15 section 402(a)(1) and serves in the capacity of  
16 a plan administrator (referred to in section  
17 3(16)(A)),

18 “(B) provides that the sponsor is to serve  
19 as plan sponsor (referred to in section  
20 3(16)(B)),

21 “(C) incorporates the requirements of sec-  
22 tion 707, and

23 “(D) provides that, effective upon the  
24 granting of an exemption under this part—

1           “(i) all participating employers must  
2           be members or affiliated members of the  
3           sponsor, except that, in the case of a spon-  
4           sor which is a professional association or  
5           other individual-based association, if at  
6           least one of the officers, directors, or em-  
7           ployees of an employer, or at least one of  
8           the individuals who are partners in an em-  
9           ployer and who actively participates in the  
10          business, is a member or affiliated member  
11          of the sponsor, participating employers  
12          may also include such employer, and

13          “(ii) all individuals thereafter com-  
14          mencing coverage under the arrangement  
15          must be—

16                 “(I) active or retired owners, offi-  
17                 cers, directors, or employees of, or  
18                 partners in, participating employers,  
19                 or

20                 “(II) the beneficiaries of individ-  
21                 uals described in subclause (I).

22          “(4) CONTRIBUTION RATES.—The contribution  
23          rates referred to in subsection (a)(3)(F)(ii) are  
24          adequate.

1           “(5) REGULATORY REQUIREMENTS.—Such  
2 other requirements as the Secretary may prescribe  
3 by regulation as necessary to carry out the purposes  
4 of this part.

5           “(c) TREATMENT OF PARTY SEEKING EXEMPTION  
6 WHERE PARTY IS SUBJECT TO DISQUALIFICATION.—

7           “(1) IN GENERAL.—In the case of any applica-  
8 tion for an exemption under this part with respect  
9 to a multiple employer welfare arrangement, if the  
10 Secretary determines that the sponsor of the ar-  
11 rangement or any other person associated with the  
12 arrangement is subject to disqualification under  
13 paragraph (2), the Secretary may deny the exemp-  
14 tion with respect to such arrangement.

15           “(2) DISQUALIFICATION.—A person is subject  
16 to disqualification under this paragraph if such per-  
17 son—

18                   “(A) has intentionally made a material  
19 misstatement in the application for exemption;

20                   “(B) has obtained or attempted to obtain  
21 an exemption under this part through misrepre-  
22 sentation or fraud;

23                   “(C) has misappropriated or converted to  
24 such person’s own use, or improperly withheld,



1 money held under a plan or any multiple  
2 employer welfare arrangement;

3 “(D) is prohibited (or would be prohibited  
4 if the arrangement were a plan) from serving in  
5 any capacity in connection with the arrange-  
6 ment under section 411,

7 “(E) has failed to appear without reason-  
8 able cause or excuse in response to a subpoena,  
9 examination, warrant, or any other order law-  
10 fully issued by the Secretary compelling such  
11 response,

12 “(F) has previously been subject to a de-  
13 termination under this part resulting in the de-  
14 nial, suspension, or revocation of an exemption  
15 under this part on similar grounds, or

16 “(G) has otherwise violated any provision  
17 of this title with respect to a matter which the  
18 Secretary determines of sufficient consequence  
19 to merit disqualification for purposes of this  
20 part.

21 “(d) FRANCHISE NETWORKS.—In the case of a mul-  
22 tiple employer welfare arrangement established and main-  
23 tained by a franchisor for a franchise network consisting  
24 of its franchisees, such franchisor shall be treated as the  
25 sponsor referred to in the preceding provisions of this sec-

1 tion, such network shall be treated as an association re-  
2 ferred to in such provisions, and each franchisee shall be  
3 treated as a member (of the association and the sponsor)  
4 referred to in such provisions, if all participating employ-  
5 ers are such franchisees and the requirements of sub-  
6 section (b)(1) with respect to a sponsor are met with  
7 respect to the network.

8 “(e) CERTAIN COLLECTIVELY BARGAINED ARRANGE-  
9 MENTS.—In applying the preceding provisions of this sec-  
10 tion in the case of a multiple employer welfare arrange-  
11 ment which would be described in section 3(40)(A)(i) but  
12 for the failure to meet any requirement of section  
13 3(40)(C)—

14 “(1) paragraphs (1) and (2) of subsection (b)  
15 and subparagraphs (A), (B), and (D) of paragraph  
16 (3) of subsection (b) shall be disregarded, and

17 “(2) the joint board of trustees shall be consid-  
18 ered the operating committee of the arrangement.

19 “(f) CERTAIN ARRANGEMENTS NOT MEETING SIN-  
20 GLE EMPLOYER REQUIREMENT.—

21 “(1) IN GENERAL.—In any case in which the  
22 majority of the employees covered under a multiple  
23 employer welfare arrangement are employees of a  
24 single employer (within the meaning of clauses (i)  
25 and (ii) of section 3(40)(B)), if all other employees

1 covered under the arrangement are employed by em-  
2 ployers who are related to such single employer, sub-  
3 section (b)(3)(D) shall be disregarded.

4 “(2) RELATED EMPLOYERS.—For purposes of  
5 paragraph (1), employers are ‘related’ if there is  
6 among all such employers a common ownership in-  
7 terest or a substantial commonality of business oper-  
8 ations based on common suppliers or customers.

9 **“SEC. 705. ADDITIONAL REQUIREMENTS APPLICABLE TO**  
10 **EXEMPTED ARRANGEMENTS.**

11 “(a) NOTICE OF MATERIAL CHANGES.—In the case  
12 of any multiple employer welfare arrangement with respect  
13 to which there is in effect an exemption granted under  
14 this part, descriptions of material changes in any informa-  
15 tion which was required to be submitted with the applica-  
16 tion for the exemption shall be filed in such form and man-  
17 ner as shall be prescribed in regulations of the Secretary.  
18 The Secretary may require by regulation prior notice of  
19 material changes with respect to specified matters which  
20 might serve as the basis for suspension or revocation of  
21 the exemption.

22 “(b) REPORTING REQUIREMENTS.—Under regula-  
23 tions of the Secretary, the requirements of sections 102,  
24 103, and 104 shall apply with respect to any multiple em-  
25 ployer welfare arrangement with respect to which there is

1 or has been in effect an exemption granted under this part  
2 in the same manner and to the same extent as such re-  
3 quirements apply to employee welfare benefit plans, irre-  
4 spective of whether such exemption continues in effect.  
5 The annual report required under section 103 for any plan  
6 year in the case of any such multiple employer welfare ar-  
7 rangement shall also include information described in sec-  
8 tion 704(a)(3)(F) with respect to the plan year and, not-  
9 withstanding section 104(a)(1)(A), shall be filed not later  
10 than 90 days after the close of the plan year.

11 “(c) ENGAGEMENT OF QUALIFIED ACTUARY.—The  
12 operating committee of each multiple employer welfare ar-  
13 rangement with respect to which there is or has been in  
14 effect an exemption granted under this part shall engage,  
15 on behalf of all covered individuals, a qualified actuary  
16 who shall be responsible for the preparation of the mate-  
17 rials comprising information necessary to be submitted by  
18 a qualified actuary under this part. The qualified actuary  
19 shall utilize such assumptions and techniques as are nec-  
20 essary to enable such actuary to form an opinion as to  
21 whether the contents of the matters reported under this  
22 part—

23 “(1) are in the aggregate reasonably related to  
24 the experience of the arrangement and to reasonable  
25 expectations, and

1           “(2) represent such actuary’s best estimate of  
2           anticipated experience under the arrangement.

3   The opinion by the qualified actuary shall be made with  
4   respect to, and shall be made a part of, the annual report.

5           “(d) FILING NOTICE OF EXEMPTION WITH  
6   STATES.—An exemption granted to a multiple employer  
7   welfare arrangement under this part shall not be effective  
8   unless written notice of such exemption is filed with the  
9   State insurance commissioner of each State in which at  
10   least 5 percent of the individuals covered under the ar-  
11   rangement are located. For purposes of this paragraph,  
12   an individual shall be considered to be located in the State  
13   in which a known address of such individual is located or  
14   in which such individual is employed. The Secretary may  
15   by regulation provide in specified cases for the application  
16   of the preceding sentence with lesser percentages in lieu  
17   of such 5 percent amount.

18   **“SEC. 706. DISCLOSURE TO PARTICIPATING EMPLOYERS BY**  
19                   **ARRANGEMENTS PROVIDING MEDICAL CARE.**

20           “(a) IN GENERAL.—A multiple employer welfare ar-  
21   rangement providing benefits consisting of medical care  
22   described in section 607(1) shall issue to each participat-  
23   ing employer—

24           “(1) a document equivalent to the summary  
25   plan description required of plans under part 1,

1           “(2) information describing the contribution  
2 rates applicable to participating employers, and

3           “(3) a statement indicating—

4               “(A) whether or not the arrangement is  
5 fully insured,

6               “(B) whether or not there is in effect with  
7 respect to the arrangement an exemption grant-  
8 ed under this part and, if there is in effect such  
9 an exemption, that the arrangement is (or is  
10 treated as) an employee welfare benefit plan  
11 under this title, and

12               “(C) that the arrangement is not a li-  
13 censed insurer under the laws of any State.

14       “(b) TIME FOR DISCLOSURE.—Such information  
15 shall be issued to employers within such reasonable period  
16 of time before becoming participating employers as may  
17 be prescribed in regulations of the Secretary.

18 **“SEC. 707. MAINTENANCE OF RESERVES.**

19       “(a) IN GENERAL.—Each multiple employer welfare  
20 arrangement with respect to which there is or has been  
21 in effect an exemption granted under this part and which  
22 is not fully insured shall establish and maintain reserves,  
23 consisting of—

24           “(1) a reserve for unearned contributions,

1           “(2) a reserve for payment of claims reported  
2           and not yet paid and claims incurred but not yet re-  
3           ported, and for expected administrative costs with  
4           respect to such claims, and

5           “(3) a reserve, in an amount recommended by  
6           the qualified actuary, for any other obligations of  
7           the arrangement.

8           “(b) MINIMUM AMOUNT FOR CERTAIN RESERVES.—  
9           The total of the reserves described in subsection (a)(2)  
10          shall not be less than an amount equal to 25 percent of  
11          expected incurred claims and expenses for the plan year.

12          “(c) REQUIRED MARGIN.—In determining the  
13          amounts of reserves required under this section in connec-  
14          tion with any multiple employer welfare arrangement, the  
15          qualified actuary shall include a margin for error and  
16          other fluctuations taking into account the specific  
17          circumstances of such arrangement.

18          “(d) ADDITIONAL REQUIREMENTS.—The Secretary  
19          may provide such additional requirements relating to re-  
20          serves and excess/stop loss coverage as the Secretary con-  
21          siders appropriate. Such requirements may be provided,  
22          by regulation or otherwise, with respect to any arrange-  
23          ment or any class of arrangements.

24          “(e) ADJUSTMENTS FOR EXCESS/STOP LOSS COV-  
25          ERAGE.—The Secretary may provide for adjustments to

1 the levels of reserves otherwise required under subsections  
2 (a) and (b) with respect to any arrangement or class of  
3 arrangements to take into account excess/stop loss cov-  
4 erage provided with respect to such arrangement or ar-  
5 rangements.

6 **“SEC. 708. CORRECTIVE ACTIONS.**

7       “(a) ACTIONS TO AVOID DEPLETION OF RE-  
8 SERVES.—A multiple employer welfare arrangement with  
9 respect to which there is or has been in effect an exemp-  
10 tion granted under this part shall continue to meet the  
11 requirements of section 707, irrespective of whether such  
12 exemption continues in effect. The operating committee of  
13 such arrangement shall determine semiannually whether  
14 the requirements of section 707 are met. In any case in  
15 which the committee determines that there is reason to  
16 believe that there is or will be a failure to meet such re-  
17 quirements, or the Secretary makes such a determination  
18 and so notifies the committee, the committee shall imme-  
19 diately notify the qualified actuary engaged by the ar-  
20 rangement, and such actuary shall, not later than the end  
21 of the next following month, make such recommendations  
22 to the committee for corrective action as the actuary deter-  
23 mines necessary to ensure compliance with section 707.  
24 Not later than 10 days after receiving from the actuary  
25 recommendations for corrective actions, the committee



1 shall notify the Secretary (in such form and manner as  
2 the Secretary may prescribe by regulation) of such rec-  
3 ommendations of the actuary for corrective action, to-  
4 gether with a description of the actions (if any) that the  
5 committee has taken or plans to take in response to such  
6 recommendations. The committee shall thereafter report  
7 to the Secretary, in such form and frequency as the Sec-  
8 retary may specify to the committee, regarding corrective  
9 action taken by the committee until the requirements of  
10 section 707 are met.

11 “(b) TERMINATION.—

12 “(1) NOTICE OF TERMINATION.—In any case in  
13 which the operating committee of a multiple em-  
14 ployer welfare arrangement with respect to which  
15 there is or has been in effect an exemption granted  
16 under this part determines that there is reason to  
17 believe that the arrangement will terminate, the  
18 committee shall so inform the Secretary, shall de-  
19 velop a plan for winding up the affairs of the ar-  
20 rangement in connection with such termination in a  
21 manner which will result in timely payment of all  
22 benefits for which the arrangement is obligated, and  
23 shall submit such plan in writing to the Secretary.  
24 Actions required under this paragraph shall be taken

1 in such form and manner as may be prescribed in  
2 regulations of the Secretary.

3 “(2) ACTIONS REQUIRED IN CONNECTION WITH  
4 TERMINATION.—In any case in which—

5 “(A) the Secretary has been notified under  
6 subsection (a) of a failure of a multiple em-  
7 ployer welfare arrangement with respect to  
8 which there is or has been in effect an exemp-  
9 tion granted under this part to meet the re-  
10 quirements of section 707 and has not been no-  
11 tified by the operating committee of the ar-  
12 rangement that corrective action has restored  
13 compliance with such requirements, and

14 “(B) the Secretary determines that the  
15 continuing failure to meet the requirements of  
16 section 707 can be reasonably expected to result  
17 in a continuing failure to pay benefits for which  
18 the arrangement is obligated,

19 the operating committee of the arrangement shall, at  
20 the direction of the Secretary, terminate the ar-  
21 rangement and, in the course of the termination,  
22 take such actions as the Secretary may require as  
23 necessary to ensure that the affairs of the arrange-  
24 ment will be, to the maximum extent possible, wound  
25 up in a manner which will result in timely payment

1 of all benefits for which the arrangement is  
2 obligated.

3 **“SEC. 709. EXPIRATION, SUSPENSION, OR REVOCATION OF**  
4 **EXEMPTION.**

5 “(a) EXPIRATION AND RENEWAL OF EXEMPTION.—  
6 An exemption granted to a multiple employer welfare ar-  
7 rangement under this part shall expire 3 years after the  
8 date on which the exemption is granted. An exemption  
9 which has expired may be renewed by means of application  
10 for an exemption in accordance with section 704.

11 “(b) SUSPENSION OR REVOCATION OF EXEMPTION  
12 BY SECRETARY.—The Secretary may suspend or revoke  
13 an exemption granted to a multiple employer welfare  
14 arrangement under this part—

15 “(1) for any cause that may serve as the basis  
16 for the denial of an initial application for such an  
17 exemption under section 704, or

18 “(2) if the Secretary finds that—

19 “(A) the arrangement, or the sponsor  
20 thereof, in the transaction of business while  
21 under the exemption, has used fraudulent, coer-  
22 cive, or dishonest practices, or has dem-  
23 onstrated incompetence, untrustworthiness, or  
24 financial irresponsibility,

1           “(B) the arrangement, or the sponsor  
2           thereof, is using such methods or practices in  
3           the conduct of its operations, so as to render its  
4           further transaction of operations hazardous or  
5           injurious to participating employers, or covered  
6           individuals,

7           “(C) the arrangement, or the sponsor  
8           thereof, has refused to be examined in accord-  
9           ance with this part or to produce its accounts,  
10          records, and files for examination in accordance  
11          with this part, or

12          “(D) any of the officers of the arrange-  
13          ment, or the sponsor thereof, has refused to  
14          give information with respect to the affairs of  
15          the arrangement or the sponsor or to perform  
16          any other legal obligation relating to such an  
17          examination when required by the Secretary in  
18          accordance with this part.

19 Any such suspension or revocation under this subsection  
20 shall be effective only upon a final decision of the Sec-  
21 retary made after notice and opportunity for a hearing  
22 is provided in accordance with section 710.

23          “(c) SUSPENSION OR REVOCATION OF EXEMPTION  
24 UNDER COURT PROCEEDINGS.—An exemption granted to  
25 a multiple employer welfare arrangement under this part

1 may be suspended or revoked by a court of competent ju-  
2 risdiction in an action by the Secretary brought under  
3 paragraph (2), (5), or (6) of section 502(a), except that  
4 the suspension or revocation under this subsection shall  
5 be effective only upon notification of the Secretary of such  
6 suspension or revocation.

7 “(d) NOTIFICATION OF PARTICIPATING EMPLOY-  
8 ERS.—All participating employers in a multiple employer  
9 welfare arrangement shall be notified of the expiration,  
10 suspension, or revocation of an exemption granted to such  
11 arrangement under this part, by such persons and in such  
12 form and manner as shall be prescribed in regulations of  
13 the Secretary, not later than 20 days after such expiration  
14 or after receipt of notice of a final decision requiring such  
15 suspension or revocation.

16 “(e) PUBLICATION OF EXPIRATIONS, SUSPENSIONS,  
17 AND REVOCATIONS.—The Secretary shall publish all expi-  
18 rations of, and all final decisions to suspend or revoke,  
19 exemptions granted under this part.

20 **“SEC. 710. REVIEW OF ACTIONS OF THE SECRETARY.**

21 “(a) IN GENERAL.—Any decision by the Secretary  
22 which involves the denial of an application by a multiple  
23 employer welfare arrangement for an exemption under this  
24 part or the suspension or revocation of such an exemption  
25 shall contain a statement of the specific reason or reasons

1 supporting the Secretary's action, including reference to  
2 the specific terms of the exemption and the statutory pro-  
3 vision or provisions relevant to the determination.

4       “(b) DENIALS OF APPLICATIONS.—In the case of the  
5 denial of an application for an exemption under this part,  
6 the Secretary shall send a copy of the decision to the appli-  
7 cant by certified or registered mail at the address specified  
8 in the records of the Secretary. Such decision shall con-  
9 stitute the final decision of the Secretary unless the ar-  
10 rangement, or any party that would be prejudiced by the  
11 decision, files a written appeal of the denial within 30 days  
12 after the mailing of such decision. The Secretary may af-  
13 firm, modify, or reverse the initial decision. The decision  
14 on appeal shall become final upon the mailing of a copy  
15 by certified or registered mail to the arrangement or party  
16 that filed the appeal.

17       “(c) SUSPENSIONS OR REVOCATIONS OF EXEMP-  
18 TION.—In the case of the suspension or revocation of an  
19 exemption granted under this part, the Secretary shall  
20 send a copy of the decision to the arrangement by certified  
21 or registered mail at its address, as specified in the  
22 records of the Secretary. Upon the request of the arrange-  
23 ment, or any party that would be prejudiced by the sus-  
24 pension or revocation, filed within 15 days of the mailing  
25 of the Secretary's decision, the Secretary shall schedule

1 a hearing on such decision by written notice, sent by cer-  
2 tified or registered mail to the arrangement or party  
3 requesting such hearing. Such notice shall set forth—

4 “(1) a specific date and time for the hearing,  
5 which shall be within the 10-day period commencing  
6 20 days after the date of the mailing of the notice,  
7 and

8 “(2) a specific place for the hearing, which shall  
9 be in the District of Columbia or in the State and  
10 county thereof (or parish or other similar political  
11 subdivision thereof) in which is located the arrange-  
12 ment’s principal place of business.

13 The decision as affirmed or modified in such hearing shall  
14 constitute the final decision of the Secretary, unless such  
15 decision is reversed in such hearing.”.

16 (b) CONFORMING AMENDMENT TO DEFINITION OF  
17 PLAN SPONSOR.—Section 3(16)(B) of such Act (29  
18 U.S.C. 1002(16)(B)) is amended by adding at the end the  
19 following new sentence: “Such term also includes the spon-  
20 sor (as defined in section 701(5)) of a multiple employer  
21 welfare arrangement, or a multiple employer health plan  
22 (as defined in section 701(10)), with respect to which  
23 there is or has been in effect an exemption granted under  
24 part 7.”.

1 (c) ALTERNATIVE MEANS OF DISTRIBUTION OF  
 2 SUMMARY PLAN DESCRIPTIONS.—Section 110 of such  
 3 Act (29 U.S.C. 1030) is amended by adding at the end  
 4 the following new subsection:

5 “(c) The Secretary shall prescribe, as an alternative  
 6 method for distributing summary plan descriptions in  
 7 order to meet the requirements of section 104(b)(1) in the  
 8 case of multiple employer welfare arrangements providing  
 9 benefits consisting of medical care described in section  
 10 607(1), a means of distribution of such descriptions by  
 11 participating employers.”.

12 (d) CLERICAL AMENDMENT.—The table of contents  
 13 in section 1 of the Employee Retirement Income Security  
 14 Act of 1974 is amended by inserting after the item relat-  
 15 ing to section 608 the following new items:

“PART 7—MULTIPLE EMPLOYER HEALTH PLANS

“Sec. 701. Definitions.

“Sec. 702. Exempted multiple employer welfare arrangements treated as em-  
 ployee welfare benefit plans and exempt from certain restric-  
 tions on preemption.

“Sec. 703. Exemption procedure.

“Sec. 704. Eligibility requirements.

“Sec. 705. Additional requirements applicable to exempted arrangements.

“Sec. 706. Disclosure to participating employers by arrangements providing  
 medical care.

“Sec. 707. Maintenance of reserves.

“Sec. 708. Corrective actions.

“Sec. 709. Expiration, suspension, or revocation of exemption.

“Sec. 710. Review of actions of the Secretary.”.

16 **SEC. 3. CLARIFICATION OF SCOPE OF PREEMPTION RULES.**

17 (a) IN GENERAL.—Section 514(b)(6)(A)(ii) of the  
 18 Employee Retirement Income Security Act of 1974 (29



1 U.S.C. 1144(b)(6)(A)(ii)) is amended by inserting “, but  
 2 only, in the case of an arrangement which provides medi-  
 3 cal care described in section 607(1) and with respect to  
 4 which an exemption under part 7 is not in effect,” before  
 5 “to the extent not inconsistent with the preceding sections  
 6 of this title”.

7 (b) CROSS-REFERENCE.—Section 514(b)(6) of such  
 8 Act (29 U.S.C. 1144(b)(6)) is amended by adding at the  
 9 end the following new subparagraph:

10 “(E) For additional rules relating to exemption from  
 11 subparagraph (A)(ii) of multiple employer welfare ar-  
 12 rangements providing medical care, see part 7.”.

13 **SEC. 4. CLARIFICATION OF TREATMENT OF SINGLE EM-**  
 14 **PLOYER ARRANGEMENTS.**

15 Section 3(40)(B) of the Employee Retirement Income  
 16 Security Act of 1974 (29 U.S.C. 1002(40)(B)) is amend-  
 17 ed—

18 (1) in clause (i), by inserting “for any plan year  
 19 of any such plan, or any fiscal year of any such  
 20 other arrangement,” after “single employer”, and by  
 21 inserting “during such year or at any time during  
 22 the preceding 1-year period” after “common con-  
 23 trol”;

24 (2) in clause (iii), by striking “common control  
 25 shall not be based on an interest of less than 25 per-

1 cent” and inserting “an interest of greater than 25  
2 percent may not be required as the minimum inter-  
3 est necessary for common control”, and by striking  
4 “and” at the end,

5 (3) by redesignating clause (iv) as clause (v),  
6 and

7 (4) by inserting after clause (iii) the following  
8 new clause:

9 “(iv) in determining, after the application of  
10 clause (i), whether benefits are provided to employ-  
11 ees of two or more employers, the arrangement shall  
12 be treated as having only 1 participating employer  
13 if, at the time the determination under clause (i) is  
14 made, the number of individuals who are employees  
15 and former employees of any one participating em-  
16 ployer and who are covered under the arrangement  
17 is greater than 95 percent of the aggregate number  
18 of all individuals who are employees or former em-  
19 ployees of participating employers and who are  
20 covered under the arrangement.”.

21 **SEC. 5. CLARIFICATION OF TREATMENT OF CERTAIN COL-**  
22 **LECTIVELY BARGAINED ARRANGEMENTS.**

23 (a) IN GENERAL.—Section 3(40)(A)(i) of the Em-  
24 ployee Retirement Income Security Act of 1974 (29  
25 U.S.C. 1002(40)(A)(i)) is amended to read as follows:

1           “(i) under or pursuant to one or more collective  
2       bargaining agreements,”.

3       (b) LIMITATIONS.—Section 3(40) of such Act (29  
4 U.S.C. 1002(40)) is amended by adding at the end the  
5 following new subparagraphs:

6           “(C) Clause (i) of subparagraph (A) shall  
7       apply only if—

8           “(i) the plan or other arrangement,  
9       and the employee organization or any other  
10      entity sponsoring the plan or other ar-  
11      rangement, do not—

12           “(I) utilize the services of any li-  
13      censed insurance agent or broker for  
14      soliciting or enrolling employers or in-  
15      dividuals as participating employers or  
16      covered individuals under the plan or  
17      other arrangement, or

18           “(II) pay a commission or any  
19      other type of compensation to a per-  
20      son that is related either to the vol-  
21      ume or number of employers or indi-  
22      viduals solicited or enrolled as partici-  
23      pating employers or covered individ-  
24      uals under the plan or other arrange-  
25      ment, or to the dollar amount or size

1 of the contributions made by partici-  
2 pating employers or covered individ-  
3 uals to the plan or other arrangement,

4 “(ii) not less than 85 percent of the  
5 covered individuals under the plan or other  
6 arrangement are individuals who—

7 “(I) are employed within a bar-  
8 gaining unit covered by at least one of  
9 the collective bargaining agreements  
10 with a participating employer (or are  
11 covered on the basis of an individual’s  
12 employment in such a bargaining  
13 unit), or

14 “(II) are present or former em-  
15 ployees of the sponsoring employee or-  
16 ganization, of an employer who is or  
17 was a party to at least one of the col-  
18 lective bargaining agreements, or of  
19 the plan or other arrangement or a  
20 related plan or arrangement (or are  
21 covered on the basis of such present  
22 or former employment),

23 “(iii) the plan or other arrangement  
24 does not provide benefits to individuals  
25 (other than individuals described in clause

1 (ii)(II)) who work outside the standard  
2 metropolitan statistical area in which the  
3 sponsoring employee organization rep-  
4 resents employees (or to individuals (other  
5 than individuals described in clause  
6 (ii)(II)) on the basis of such work by oth-  
7 ers), except that in the case of a sponsor-  
8 ing employee organization that represents  
9 employees who work outside of any stand-  
10 ard metropolitan statistical area, this  
11 clause shall be applied by reference to the  
12 State in which the sponsoring organization  
13 represents employees,

14 “(iv) the employee organization or  
15 other entity sponsoring the plan or other  
16 arrangement certifies to the Secretary each  
17 year, in a form and manner which shall  
18 be prescribed in regulations of the Sec-  
19 retary—

20 “(I) that the plan or other ar-  
21 rangement meets the requirements of  
22 clauses (i), (ii), and (iii), and

23 “(II) if, for any year, 10 percent  
24 or more of the covered individuals  
25 under the plan are individuals not de-

1           scribed in subclause (I) or (II) of  
2           clause (ii), the total number of cov-  
3           ered individuals and the total number  
4           of covered individuals not so de-  
5           scribed.

6           “(D)(i) Clause (i) of subparagraph (A)  
7           shall not apply to a plan or other arrangement  
8           that is established or maintained pursuant to  
9           one or more collective bargaining agreements  
10          which the National Labor Relations Boards de-  
11          termines to have been negotiated or otherwise  
12          agreed to in a manner or through conduct  
13          which violates section 8(a)(2) of the National  
14          Labor Relations Act (29 U.S.C. 158(a)(2)).

15          “(ii)(I) Whenever a State insurance com-  
16          missioner has reason to believe that this sub-  
17          paragraph is applicable to part or all of a plan  
18          or other arrangement, the State insurance com-  
19          missioner may file a petition with the National  
20          Labor Relations Board for a determination  
21          under clause (i), along with sworn written testi-  
22          mony supporting the petition.

23          “(II) The Board shall give any such peti-  
24          tion priority over all other petitions and cases,  
25          other than other petitions under subclause (I)

1 or cases given priority under section 10 of the  
2 National Labor Relations Act (29 U.S.C. 160).

3 “(III) The Board shall determine, upon  
4 the petition and any response, whether, on the  
5 facts before it, the plan or other arrangement  
6 was negotiated, created, or otherwise agreed to  
7 in a manner or through conduct which violates  
8 section 8(a)(2) of the National Labor Relations  
9 Act (29 U.S.C. 158(a)(2)). Such determination  
10 shall constitute a final determination for pur-  
11 poses of this subparagraph and shall be binding  
12 in all Federal or State actions with respect to  
13 the status of the plan or other arrangement  
14 under this subparagraph.

15 “(IV) A person aggrieved by the deter-  
16 mination of the Board under subclause (III)  
17 may obtain review of the determination in any  
18 United States court of appeals in the circuit in  
19 which the collective bargaining at issue oc-  
20 curred. Commencement of proceedings under  
21 this subclause shall not, unless specifically or-  
22 dered by the court, operate as a stay of any  
23 State administrative or judicial action or pro-  
24 ceeding related to the status of the plan or  
25 other arrangement, except that in no case may

1 the court stay, before the completion of the re-  
2 view, an order which prohibits the enrollment of  
3 new individuals into coverage under a plan or  
4 arrangement.”.

5 **SEC. 6. EMPLOYEE LEASING HEALTHCARE ARRANGE-**  
6 **MENTS.**

7 (a) EMPLOYEE LEASING HEALTHCARE ARRANGE-  
8 MENT DEFINED.—Section 3 of the Employee Retirement  
9 Income Security Act of 1974 (29 U.S.C. 1002) is amended  
10 by adding at the end the following new paragraph:

11 “(43) EMPLOYEE LEASING HEALTHCARE ARRANGE-  
12 MENT.—

13 “(A) IN GENERAL.—Subject to subparagraph  
14 (B), the term ‘employee leasing healthcare arrange-  
15 ment’ means any labor leasing arrangement, staff  
16 leasing arrangement, extended employee staffing or  
17 supply arrangement, or other arrangement under  
18 which—

19 “(i) one business or other entity (herein-  
20 after in this paragraph referred to as the ‘les-  
21 see’), under a lease or other arrangement en-  
22 tered into with any other business or other en-  
23 tity (hereinafter in this paragraph referred to  
24 as the ‘lessor’), receives from the lessor the



1 services of individuals to be performed under  
2 such lease or other arrangement, and

3 “(ii) benefits consisting of medical care de-  
4 scribed in section 607(1) are provided to such  
5 individuals or such individuals and their de-  
6 pendents as participants and beneficiaries.

7 “(B) EXCEPTION.—Such term does not include  
8 an arrangement described in subparagraph (A) if,  
9 under such arrangement, the lessor retains, both le-  
10 gally and in fact, a complete right of direction and  
11 control within the scope of employment over the in-  
12 dividuals whose services are supplied under such  
13 lease or other arrangement, and such individuals  
14 perform a specified function for the lessee which is  
15 separate and divisible from the primary business or  
16 operations of the lessee.”.

17 (b) TREATMENT OF EMPLOYEE LEASING  
18 HEALTHCARE ARRANGEMENTS AS MULTIPLE EMPLOYER  
19 WELFARE ARRANGEMENTS.—Section 3(40) of such Act  
20 (29 U.S.C. 1002(40)) (as amended by the preceding provi-  
21 sions of this Act) is further amended by adding at the  
22 end the following new subparagraph:

23 “(E) The term ‘multiple employer welfare arrange-  
24 ment’ includes any employee leasing healthcare arrange-  
25 ment, except that such term does not include any employee

1 leasing healthcare arrangement which is a multiple em-  
2 ployer health plan (as defined in section 701(10)).”.

3 (c) SPECIAL RULES FOR EMPLOYEE LEASING  
4 HEALTHCARE ARRANGEMENTS.—

5 (1) IN GENERAL.—Part 7 of subtitle B of title  
6 I of such Act (as added by the preceding provisions  
7 of this Act) is amended by adding at the end the fol-  
8 lowing new section:

9 **“SEC. 711. SPECIAL RULES FOR EMPLOYEE LEASING**  
10 **HEALTHCARE ARRANGEMENTS.**

11 “(a) IN GENERAL.—The requirements of paragraphs  
12 (1), (2), and (3) of section 704(b) shall be treated as satis-  
13 fied in the case of a multiple employer welfare arrange-  
14 ment that is an employee leasing healthcare arrangement  
15 if the application for exemption includes information  
16 which the Secretary determines to be complete and accu-  
17 rate and sufficient to demonstrate that the following  
18 requirements are met with respect to the arrangement:

19 “(1) 3-YEAR TENURE.—The lessor has been in  
20 operation for not less than 3 years.

21 “(2) SOLICITATION RESTRICTIONS.—Employee  
22 leasing services provided under the arrangement are  
23 not solicited, advertised, or marketed through li-  
24 censed insurance agents or brokers acting in such  
25 capacity.

1           “(3) CREATION OF EMPLOYMENT RELATION-  
2 SHIP.—

3           “(A) DISCLOSURE STATEMENT.—Written  
4 notice is provided to each applicant for employ-  
5 ment subject to coverage under the arrange-  
6 ment, at the time of application for employment  
7 and before commencing coverage under the ar-  
8 rangement, stating that the employer is the les-  
9 sor under the arrangement.

10          “(B) INFORMED CONSENT.—Each such  
11 applicant signs a written statement consenting  
12 to the employment relationship with the lessor.

13          “(C) INFORMED RECRUITMENT OF LES-  
14 SEE’S EMPLOYEES.—In any case in which the  
15 lessor offers employment to an employee of a  
16 lessee under the arrangement, the lessor in-  
17 forms each employee in writing that his or her  
18 acceptance of employment with the lessor is vol-  
19 untary and that refusal of such offer will not be  
20 deemed to be resignation from or abandonment  
21 of current employment.

22          “(4) REQUISITE EMPLOYER-EMPLOYEE RELA-  
23 TIONSHIP UNDER ARRANGEMENT.—Under the em-  
24 ployer-employee relationship with the employees of  
25 the lessor—

1           “(A) the lessor retains the ultimate author-  
2           ity to hire, terminate, and reassign such em-  
3           ployees,

4           “(B) the lessor is responsible for the pay-  
5           ment of wages, payroll-related taxes, and em-  
6           ployee benefits, without regard to payment by  
7           the lessee to the lessor for its services,

8           “(C) the lessor maintains the right of di-  
9           rection and control over its employees, except to  
10          the extent that the lessee is responsible for su-  
11          pervision of the work performed consistent with  
12          the lessee’s responsibility for its product or  
13          service, and

14          “(D) in accordance with section 301(a) of  
15          the Labor Management Relations Act, 1947 (29  
16          U.S.C. 185(a)), the lessor retains in the ab-  
17          sence of an applicable collective bargaining  
18          agreement, the right to enter into arbitration  
19          and to decide employee grievances, and

20          “(E) no owner, officer, or director of, or  
21          partner in, a lessee is an employee of the lessor,  
22          and not more than 10 percent of the individuals  
23          covered under the arrangement consist of own-  
24          ers, officers, or directors of, or partners in,  
25          such a lessee (or any combination thereof).

1 “(b) DEFINITIONS.—For purposes of this section—

2 “(1) LESSOR.—The term ‘lessor’ means the  
3 business or other entity from which services of indi-  
4 viduals are obtained under an employee leasing  
5 healthcare arrangement.

6 “(2) LESSEE.—The term ‘lessee’ means a busi-  
7 ness or other entity which receives the services of in-  
8 dividuals provided under an employee leasing  
9 healthcare arrangement.”.

10 (2) CLERICAL AMENDMENT.—The table of con-  
11 tents in section 1 of such Act (as amended by the  
12 preceding provisions of this Act) is further amended  
13 by inserting after the item relating to section 710  
14 the following new item:

“Sec. 711. Employee leasing healthcare arrangements.”.

15 **SEC. 7. ENFORCEMENT PROVISIONS RELATING TO MUL-**  
16 **TIPLE EMPLOYER WELFARE ARRANGEMENTS**  
17 **AND EMPLOYEE LEASING HEALTHCARE AR-**  
18 **RANGEMENTS.**

19 (a) ENFORCEMENT OF FILING REQUIREMENTS.—  
20 Section 502 of the Employee Retirement Income Security  
21 Act of 1974 (29 U.S.C. 1132) is amended—

22 (1) in subsection (a)(6), by striking “subsection  
23 (c)(2) or (i) or (l)” and inserting “paragraph (2) or  
24 (4) of subsection (c) or subsection (i) or (l)”; and

1           (2) by adding at the end of subsection (c) the  
2           following new paragraph:

3           “(4) The Secretary may assess a civil penalty against  
4           any person of up to \$1,000 a day from the date of such  
5           person’s failure or refusal to file the information required  
6           to be filed with the Secretary under section 101(e).”.

7           (b) ACTIONS BY STATES IN FEDERAL COURT.—Sec-  
8           tion 502(a) of such Act (29 U.S.C. 1132(a)) is amended—

9           (1) in paragraph (5), by striking “or” at the  
10          end;

11          (2) in paragraph (6), by striking the period and  
12          inserting “, or”; and

13          (3) by adding at the end the following:

14          “(7) by a State official having authority under  
15          the law of such State to enforce the laws of such  
16          State regulating insurance, to enjoin any act or  
17          practice which violates any provision of part 7 which  
18          such State has the power to enforce under part 7.”.

19          (c) CRIMINAL PENALTIES FOR CERTAIN WILLFUL  
20          MISREPRESENTATIONS.—Section 501 of such Act (29  
21          U.S.C. 1131) is amended—

22          (1) by inserting “(a)” after “SEC. 501.”; and

23          (2) by adding at the end the following new sub-  
24          section:

1       “(b) Any person who, either willfully or with willful  
2 blindness, falsely represents, to any employee, any employ-  
3 ee’s beneficiary, any employer, the Secretary, or any State,  
4 an arrangement established or maintained for the purpose  
5 of offering or providing any benefit described in section  
6 3(1) to employees or their beneficiaries as being a multiple  
7 employer welfare arrangement granted an exemption  
8 under part 7, as being an employee leasing healthcare ar-  
9 rangement under such an exemption, or as having been  
10 established or maintained under or pursuant to a collective  
11 bargaining agreement shall, upon conviction, be impris-  
12 oned not more than five years, be fined under title 18,  
13 United States Code, or both.”.

14       (d) CEASE ACTIVITIES ORDERS.—Section 502 of  
15 such Act (29 U.S.C. 1132) is amended by adding at the  
16 end the following new subsection:

17       “(m)(1) Subject to paragraph (2), upon application  
18 by the Secretary showing the operation, promotion, or  
19 marketing of a multiple employer welfare arrangement  
20 providing benefits consisting of medical care described in  
21 section 607(1) that—

22               “(A) is not licensed, registered, or otherwise ap-  
23 proved under the insurance laws of the States in  
24 which the arrangement offers or provides benefits, or

1           “(B) is not operating in accordance with the  
2       terms of an exemption granted by the Secretary  
3       under part 7,  
4 a district court of the United States shall enter an order  
5 requiring that the arrangement cease activities.

6       “(2) Paragraph (1) shall not apply in the case of a  
7 multiple employer welfare arrangement if the arrangement  
8 shows that it—

9           “(A) is fully insured, within the meaning of  
10      section 701(9),

11          “(B) is licensed, registered, or otherwise ap-  
12      proved in each State in which it offers or provides  
13      benefits, except to the extent that such State does  
14      not require licensing, registration, or approval of  
15      fully insured multiple employer welfare arrange-  
16      ments, and

17          “(C) with respect to each such State, is operat-  
18      ing in accordance with applicable State insurance  
19      laws that are not superseded under section 514.

20       “(3) The court may grant such additional equitable  
21 or remedial relief, including any relief available under this  
22 title, as it deems necessary to protect the interests of the  
23 public and of persons having claims for benefits against  
24 the arrangement.”.



1       (e) RESPONSIBILITY FOR CLAIMS PROCEDURE.—  
 2 Section 503 of such Act (29 U.S.C. 1133) is amended by  
 3 adding at the end (after and below paragraph (2)) the fol-  
 4 lowing new sentence: “The terms of each multiple em-  
 5 ployer welfare arrangement to which this section applies  
 6 and which provides benefits consisting of medical care de-  
 7 scribed in section 607(1) shall require the operating com-  
 8 mittee or the named fiduciary (as applicable) to ensure  
 9 that the requirements of this section are met in connection  
 10 with claims filed under the arrangement.”.

11 **SEC. 8. FILING REQUIREMENTS FOR HEALTH BENEFIT**  
 12 **MULTIPLE EMPLOYER WELFARE ARRANGE-**  
 13 **MENTS.**

14 Section 101 of the Employee Retirement Income Se-  
 15 curity Act of 1974 (29 U.S.C. 1021) is amended—

16       (1) by redesignating subsection (e) as sub-  
 17 section (f); and

18       (2) by inserting after subsection (d) the follow-  
 19 ing new subsection:

20       “(e)(1) Each multiple employer welfare arrangement  
 21 shall file with the Secretary a registration statement de-  
 22 scribed in paragraph (2) within 60 days before commenc-  
 23 ing operations (in the case of an arrangement commencing  
 24 operations on or after January 1, 1994) and no later than  
 25 February 15 of each year (in the case of an arrangement

1 in operation since the beginning of such year), unless, as  
2 of the date by which such filing otherwise must be made,  
3 such arrangement provides no benefits consisting of medi-  
4 cal care described in section 607(1).

5 “(2) Each registration statement—

6 “(A) shall be filed in such form, and contain  
7 such information concerning the multiple employer  
8 welfare arrangement and any persons involved in its  
9 operation (including whether the arrangement is  
10 fully insured), as shall be provided in regulations  
11 which shall be prescribed by the Secretary, and

12 “(B) if the arrangement is not fully insured,  
13 shall contain a certification that copies of such reg-  
14 istration statement have been transmitted by cer-  
15 tified mail to—

16 “(i) in the case of an arrangement with re-  
17 spect to which an exemption under part 7 is in  
18 effect, the State insurance commissioner of the  
19 domicile State of such arrangement, or

20 “(ii) in the case of an arrangement which  
21 is not so exempt, the State insurance commis-  
22 sioner of each State in which the arrangement  
23 is located.

24 “(3) The person or persons responsible for filing the  
25 annual registration statement are—

1           “(A) the trustee or trustees so designated by  
2           the terms of the instrument under which the mul-  
3           tiple employer welfare arrangement is established or  
4           maintained, or

5           “(B) in the case of a multiple employer welfare  
6           arrangement for which the trustee or trustees can-  
7           not be identified, or upon the failure of the trustee  
8           or trustees of an arrangement to file, the person or  
9           persons actually responsible for the acquisition, dis-  
10          position, control, or management of the cash or  
11          property of the arrangement, irrespective of whether  
12          such acquisition, disposition, control, or management  
13          is exercised directly by such person or persons or  
14          through an agent designated by such person or  
15          persons.

16          “(4) Any agreement entered into under section  
17          506(c) with a State as the primary domicile State with  
18          respect to any multiple employer welfare arrangement  
19          shall provide for simultaneous filings of reports required  
20          under this subsection with the Secretary and with the  
21          State insurance commissioner of such State.”.

1 **SEC. 9. COOPERATION BETWEEN FEDERAL AND STATE AU-**  
2 **THORITIES.**

3 Section 506 of the Employee Retirement Income Se-  
4 curity Act of 1974 (29 U.S.C. 1136) is amended by adding  
5 at the end the following new subsection:

6 “(c) RESPONSIBILITY WITH RESPECT TO MULTIPLE  
7 EMPLOYER WELFARE ARRANGEMENTS.—

8 “(1) STATE ENFORCEMENT.—

9 “(A) AGREEMENTS WITH STATES.—A  
10 State may enter into an agreement with the  
11 Secretary for delegation to the State of some or  
12 all of the Secretary’s authority under sections  
13 502 and 504 to enforce the provisions of this  
14 title applicable to multiple employer welfare ar-  
15 rangements with respect to which an exemption  
16 under part 7 is or has been in effect. The Sec-  
17 retary shall enter into the agreement if the Sec-  
18 retary determines that the delegation provided  
19 for therein would not result in a lower level or  
20 quality of enforcement of the provisions of this  
21 title.

22 “(B) DELEGATIONS.—Any department,  
23 agency, or instrumentality of a State to which  
24 authority is delegated pursuant to an agree-  
25 ment entered into under this paragraph may, if  
26 authorized under State law and to the extent

1 consistent with such agreement, exercise the  
2 powers of the Secretary under this title which  
3 relate to such authority.

4 “(C) CONCURRENT AUTHORITY OF THE  
5 SECRETARY.—If the Secretary delegates author-  
6 ity to a State in an agreement entered into  
7 under subparagraph (A), the Secretary may  
8 continue to exercise such authority concurrently  
9 with the State.

10 “(D) RECOGNITION OF PRIMARY DOMICILE  
11 STATE.—In entering into any agreement with a  
12 State under subparagraph (A), the Secretary  
13 shall ensure that, as a result of such agreement  
14 and all other agreements entered into under  
15 subparagraph (A), only one State will be recog-  
16 nized, with respect to any particular multiple  
17 employer welfare arrangement, as the primary  
18 domicile State to which authority has been dele-  
19 gated pursuant to such agreements.

20 “(2) ASSISTANCE TO STATES.—The Secretary  
21 shall—

22 “(A) provide enforcement assistance to the  
23 States with respect to multiple employer welfare  
24 arrangements, including, but not limited to, co-  
25 ordinating Federal and State efforts through

1 the establishment of cooperative agreements  
2 with appropriate State agencies under which  
3 the Pension and Welfare Benefits Administra-  
4 tion keeps the States informed of the status of  
5 its cases and makes available to the States in-  
6 formation obtained by it,

7 “(B) provide continuing technical assist-  
8 ance to the States with respect to issues involv-  
9 ing multiple employer welfare arrangements  
10 and this Act,

11 “(C) assist the States in obtaining from  
12 the Office of Regulations and Interpretations  
13 timely and complete responses to requests for  
14 advisory opinions on issues described in sub-  
15 paragraph (B), and

16 “(D) distribute copies of all advisory opin-  
17 ions described in subparagraph (C) to the State  
18 insurance commissioner of each State.”.

19 **SEC. 10. EFFECTIVE DATE; TRANSITIONAL RULES.**

20 (a) **EFFECTIVE DATE.**—The amendments made by  
21 this Act shall take effect January 1, 1994, except that  
22 the Secretary of Labor may issue regulations before such  
23 date under such amendments. The Secretary shall issue  
24 all regulations necessary to carry out the amendments  
25 made by this Act before the effective date thereof.

1 (b) TRANSITIONAL RULES.—If the sponsor of a mul-  
 2 tiple employer welfare arrangement which, as of January  
 3 1, 1994, provides benefits consisting of medical care de-  
 4 scribed in section 607(1) of the Employee Retirement In-  
 5 come Security Act of 1974 (29 U.S.C. 1167(1)) files with  
 6 the Secretary of Labor an application for an exemption  
 7 under part 7 of subtitle B of title I of such Act within  
 8 180 days after such date and the Secretary has not, as  
 9 of 90 days after receipt of such application, found such  
 10 application to be materially deficient, section 514(b)(6)(A)  
 11 of such Act (29 U.S.C. 1144(b)(6)(A)) shall not apply  
 12 with respect to such arrangement during the 18-month pe-  
 13 riod following such date. If the Secretary determines, at  
 14 any time after the date of enactment of this Act, that any  
 15 such exclusion from coverage under the provisions of such  
 16 section 514(b)(6)(A) of a multiple employer welfare ar-  
 17 rangement would be detrimental to the interests of individ-  
 18 uals covered under such arrangement, such exclusion shall  
 19 cease as of the date of the determination. Any determina-  
 20 tion made by the Secretary under this subsection shall be  
 21 in the Secretary's sole discretion.

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